

ASSEMBLY BILL

No. 1516

Introduced by Assembly Member Bates

February 21, 2003

An act to amend Section 3048 of the Family Code, relating to child custody, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1516, as introduced, Bates. Child custody: abduction.

Existing law makes it a crime to take, entice away, keep, withhold, or conceal a child and maliciously deprive a lawful custodian of a right to custody, or a person of a right to visitation. Existing law provides immunity from this crime for certain persons, including, but not limited to, a person with a right to custody of a child who has been a victim of domestic violence and who complies with specified requirements. The Synclair-Cannon Child Abduction Prevention Act of 2002 requires a court, in cases in which the court becomes aware of facts which may indicate a risk of abduction of a child, to consider specified factors in determining the risk of abduction and whether measures are needed to prevent that abduction.

This bill would provide that the Synclair-Cannon Child Abduction Prevention Act of 2002 does not affect the applicability of that provision that immunizes persons with a right to custody under certain circumstances from the crime of taking, enticing away, keeping, withholding, or concealing a child and maliciously depriving a lawful custodian of a right to custody, or a person of a right to visitation.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ²/₃. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3048 of the Family Code is amended to
2 read:

3 3048. (a) Notwithstanding any other provision of law, in any
4 proceeding to determine child custody or visitation with a child,
5 every custody or visitation order shall contain all of the following:

6 (1) The basis for the court's exercise of jurisdiction.

7 (2) The manner in which notice and opportunity to be heard
8 were given.

9 (3) A clear description of the custody and visitation rights of
10 each party.

11 (4) A provision stating that a violation of the order may subject
12 the party in violation to civil or criminal penalties, or both.

13 (5) Identification of the country of habitual residence of the
14 child or children.

15 (b) (1) In cases in which the court becomes aware of facts
16 which may indicate that there is a risk of abduction of a child, the
17 court shall, either on its own motion or at the request of a party,
18 determine whether measures are needed to prevent the abduction
19 of the child by one parent. To make that determination, the court
20 shall consider the risk of abduction of the child, obstacles to
21 location, recovery, and return if the child is abducted, and potential
22 harm to the child if he or she is abducted. To determine whether
23 there is a risk of abduction, the court shall consider the following
24 factors:

25 (A) Whether a party has previously taken, enticed away, kept,
26 withheld, or concealed a child in violation of the right of custody
27 or of visitation of a person, regardless of whether the party acted
28 in compliance with Section 278.7 of the Penal Code or not.

29 (B) Whether a party has previously threatened to take, entice
30 away, keep, withhold, or conceal a child in violation of the right
31 of custody or of visitation of a person.

32 (C) Whether a party lacks strong ties to this state.

33 (D) Whether a party has strong familial, emotional, or cultural
34 ties to another state or country, including foreign citizenship. This



1 factor shall be considered only if evidence exists in support of
2 another factor specified in this section.

3 (E) Whether a party has no financial reason to stay in this state,
4 including whether the party is unemployed, is able to work
5 anywhere, or is financially independent.

6 (F) Whether a party has engaged in planning activities that
7 would facilitate the removal of a child from the state, including
8 quitting a job, selling his or her primary residence, terminating a
9 lease, closing a bank account, liquidating other assets, hiding or
10 destroying documents, applying for a passport, or applying to
11 obtain a birth certificate or school or medical records.

12 (G) Whether a party has a history of domestic violence, lack of
13 parental cooperation, or child abuse.

14 (H) Whether a party has a criminal record.

15 (2) If the court makes a finding that there is a need for
16 preventative measures after considering the factors listed in
17 paragraph (1), the court shall consider taking one or more of the
18 following measures to prevent the abduction of the child:

19 (A) Ordering supervised visitation.

20 (B) Requiring a parent to post a bond in an amount sufficient
21 to serve as a financial deterrent to abduction, the proceeds of which
22 may be used to offset the cost of recovery of the child in the event
23 there is an abduction.

24 (C) Restricting the right of the custodial or noncustodial parent
25 to remove the child from the county, the state, or the country.

26 (D) Restricting the right of the custodial parent to relocate with
27 the child, unless the custodial parent provides advance notice to,
28 and obtains the written agreement of, the noncustodial parent, or
29 obtains the approval of the court, before relocating with the child.

30 (E) Requiring the surrender of passports and other travel
31 documents.

32 (F) Prohibiting a parent from applying for a new or
33 replacement passport for the child.

34 (G) Requiring a parent to notify a relevant foreign consulate or
35 embassy of passport restrictions and to provide the court with
36 proof of that notification.

37 (H) Requiring a party to register a California order in another
38 state as a prerequisite to allowing a child to travel to that state for
39 visits, or to obtain an order from another country containing terms
40 identical to the custody and visitation order issued in the United

1 States (recognizing that these orders may be modified or enforced
2 pursuant to the laws of the other country), as a prerequisite to
3 allowing a child to travel to that county for visits.

4 (I) Obtaining assurances that a party will return from foreign
5 visits by requiring the traveling parent to provide the court or the
6 other parent or guardian with any of the following:

7 (i) The travel itinerary of the child.

8 (ii) Copies of round trip airline tickets.

9 (iii) A list of addresses and telephone numbers where the child
10 can be reached at all times.

11 (iv) An open airline ticket for the left-behind parent in case the
12 child is not returned.

13 (J) Including provisions in the custody order to facilitate use of
14 the Uniform Child Custody Jurisdiction and Enforcement Act
15 (Part 3 (commencing with Section 3400)) and the Hague
16 Convention on the Civil Aspects of International Child Abduction
17 (implemented pursuant to 42 U.S.C. Sec. 11601 et seq.), such as
18 identifying California as the home state of the child or otherwise
19 defining the basis for the California court's exercise of jurisdiction
20 under Part 3 (commencing with Section 3400), identifying the
21 United States as the country of habitual residence of the child
22 pursuant to the Hague Convention, defining custody rights
23 pursuant to the Hague Convention, obtaining the express
24 agreement of the parents that the United States is the country of
25 habitual residence of the child, or that California or the United
26 States is the most appropriate forum for addressing custody and
27 visitation orders.

28 (K) Authorizing the assistance of law enforcement.

29 (3) If the court imposes any or all of the conditions listed in
30 paragraph (2), those conditions shall be specifically noted on the
31 minute order of the court proceedings.

32 (4) If the court determines there is a risk of abduction that is
33 sufficient to warrant the application of one or more of the
34 prevention measures authorized by this section, the court shall
35 inform the parties of the telephone number and address of the
36 Child Abduction Unit in the office of the district attorney in the
37 county where the custody or visitation order is being entered.

38 (c) The Judicial Council shall make the changes to its child
39 custody order forms that are necessary for the implementation of



1 subdivision (b). This subdivision shall become operative on July
2 1, 2003.

3 *(d) Nothing in this section affects the applicability of Section*
4 *278.7 of the Penal Code.*

5 SEC. 2. This act is an urgency statute necessary for the
6 immediate preservation of the public peace, health, or safety
7 within the meaning of Article IV of the Constitution and shall go
8 into immediate effect. The facts constituting the necessity are:

9 There has been some confusion regarding Chapter 856 of the
10 Statutes of 2002, which added “The Synclair-Cannon Child
11 Abduction Prevention Act” to the Family Code. It is vital to clarify
12 that this act does not affect the applicability of Section 278.7 of the
13 Penal Code, which protects victims of domestic violence and their
14 children. This act is necessary to ensure that the original spirit of
15 the abduction prevention act is preserved, which is to prevent the
16 illegal international abduction of children, without otherwise
17 compromising the ability of domestic violence victims to escape
18 abusive situations. This act is deemed urgent and should take effect
19 immediately in order to prevent any unintended legal
20 consequences that may result in penalizing innocent victims of
21 domestic violence.

